

Ari Goldberger (AG9391)
Ari Goldberger, ESQwire.com PC
35 Cameo Drive
Cherry Hill, NJ 08003
(856) 874-9651

RECEIVED-CLERK
U.S. DISTRICT COURT

2005 FEB -9 P 3:04

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARI GOLDBERGER, ESQwire.com PC)

Plaintiff,)

v.)

Civil Action No. 05cv 781 (JEI)

DANIEL KHOSHNOOD)
A/K/A DANIEL KAY;)
a California resident;)

JOSHUATHAN INVESTMENTS, INC.;)
a foreign corporation; and)

AMCORE & COMPANY;)
a foreign corporation)

Defendants)

COMPLAINT

Plaintiff, Ari Goldberger, ESQwire.com PC, through counsel, states as follows in support of the Complaint against Defendants Daniel Khoshnood, a/k/a Daniel Kay. Joshuaathan Investments, Inc., and Amcore & Company.

PARTIES

1. Plaintiff Ari Goldberger ESQwire.com P.C. (hereinafter "Buyer"), is a professional corporation located in Camden County, New Jersey, with a business

address of 35 Cameo Drive, Cherry Hill, NJ 08003, and PMB 230, 100 Springdale Rd., A3, Cherry Hill, NJ 08003.

2. Defendant Daniel Khoshnood a/k/a Daniel Kay is an individual residing at 20866 Collins Street, Woodland Hills, California 91367 (Hereinafter "Khoshnood/Kay"). Upon information and belief, Khoshnood/Kay is an owner, authorized director, officer, agent and/or partner of Joshuathan and Amcore. (hereinafter, Khoshnood/Kay, Joshuathan, and Amcore, are collectively referred to as "Sellers.").

3. Defendant Joshuathan Investments, Inc, (hereinafter "Joshuathan") is, on information and belief, a foreign corporation with a place of business at 22048 Sherman Way, Suite 204, Canoga Park, California 91303.

4. Upon information and belief, Joshuathan is a defunct corporation, owned by Khoshnood/Kay, but Khoshnood/Kay continues to conduct business under the name Joshuathan Investments.

5. Defendant Amcore & Company is, on information and belief, a foreign corporation with a place of business at 22048 Sherman Way, Suite 204, Canoga Park, California 91303 (hereinafter "Amcore").

JURISDICTION AND VENUE

6. This Court has original jurisdiction because the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

7. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum of \$75,000, and is between citizens of different States.

8. Jurisdiction over the person of the Sellers is vested in this Court because Sellers entered into a written contract with Buyer who resides in New Jersey, and such contract states under the clause "Governing Law," that it "is made under and shall be governed by and interpreted in accordance with the laws of the State of New Jersey." Through their actions, defendants purposefully created a substantial connection with New Jersey from which the subject matter of this action arises.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 in that the claims and causes of action alleged herein arose in this District.

FACTUAL AVERMENTS

10. Joshuaathan is the registrant and owner of the Internet Domain Name DOWLOAD.COM, which is registered with the Internet domain name registrar OpenSRS, a subsidiary of Tucows. A true and correct copy of the Whois report for the domain name DOWLOAD.COM showing Joshuaathan as registrant is annexed hereto as Exhibit A.

11. Amcore is the registrant and owner of the Internet Domain Name DOWNLOD.COM, which is registered with the Internet domain name registrar Bulkregister. A true and correct copy of the Whois report for the Domain Name

DOWNLOD.COM showing Amcore as registrant is annexed hereto as Exhibit B. (hereinafter, the domain names DOWLOAD.COM and DOWNLOD.COM are collectively referred to as the "Domain Names.")

12. The administrative contact for a domain name is the individual authorized by the domain name Registrar to control a domain name, including changing the registration information and transferring the domain name to other parties.

13. Khoshnood/Kay is the administrative contact for the Domain Names. He uses the email address dk@global2000.com for the domain name DOWLOAD.COM, and the email address amcoreltd@global2000.com for the domain name DOWNLOD.COM. Global2000.com, the domain name associated with Khoshnood/Kay's email addresses, is owned by Global Net 2000, Inc., a California Corporation of which Khoshnood/Kay is an owner, authorized director, officer, agent and/or partner.

14. In December 2004, Buyer's partner, Lawrence J. Fischer (hereinafter "Fischer"), contacted Khoshnood/Kay to discuss a purchase of the Domain Names. After a series of negotiations, Khoshnood/Kay emailed Fischer on January 14, 2005 stating "Larry, I have been authorized to do the transaction for 95. Will that work for you?" Fischer agreed and advised Khoshnood/Kay that he would have a contract prepared.

15. On or about January 30, 2005 Buyer and Sellers entered into a "Domain Name Sale and Transfer Agreement For: Dowload.com and Downlod.com." (Hereinafter, the "Agreement," a true and correct copy of which is annexed hereto as Exhibit C. Khoshnood/Kay signed the Agreement on behalf of each Seller and faxed the Agreement to Buyer. Buyer signed the Agreement and faxed it to Khoshnood/Kay at the fax number he provided. Khoshnood/Kay acknowledged receipt of the duly signed agreement via email to Buyer. The Agreement provides that signed counterparts transmitted via fax are "equivalent to a signed original of this Agreement." The Agreement provides in principal part that:

- a. Sellers agree to sell, and Buyer agrees to buy, the Internet domain names DOWNLOD.COM and DOWLOAD.COM for a purchase price of \$95,000.00.
- b. Buyer shall deposit the \$95,000.00 in escrow with the Internet Escrow Service, Escrow.com.
- c. Upon deposit of the \$95,000.00 purchase price with Escrow.com, Sellers shall transfer the registrations of the Domain Names to Buyer.

16. On February 2, 2003, Khoshnood Kay initiated an Escrow transaction for the sale of the Domain Name for \$95,000.00 with the internet escrow Service Escrow.com (Transaction #316432).

17. On February 3, 2003, Buyer wired the \$95,000.00 purchase price and the Escrow.com fee of \$845.50 to Escrow.com. Later that same day, Escrow.com

confirmed receipt of the payment and notified Sellers to transfer the Domain Names to Buyer. A true and correct print-out from the Escrow.com web site showing the transaction information and current status is annexed hereto as Exhibit D.

18. Despite the instructions from Escrow.com, and several email and voicemail requests to Khoshnood/Kay from Buyer and Fischer, to transfer the Domain Names to Buyer, Sellers have failed to transfer the Domain Names.

19. On February 8, 2005, Buyer emailed Khoshnood/Kay stating "If I do not hear from you by Midnight Eastern time tonight as to either i) confirmation that you are unlocking the domain names to facilitate the transfer of the Domain Names or ii) an explanation of exactly when this will be done, I will have to conclude that you are not going to fulfill your legal obligation under the Agreement."

20. On February 8, 2005, apparently in response to Buyer's earlier email to Khoshnood/Kay, Iraj Khoshnood, the father of Khoshnood/Kay contacted Fischer on behalf of Khoshnood/Kay. A 3-way conference call was arranged with Buyer, Fischer and Iraj Khoshnood. During the call, Iraj Khoshnood advised Fischer and Buyer that he was negotiating with another party to sell the Domain Names for \$150,000.00, but that Sellers would still sell the Domain Names to Buyer at an increased price of \$150,000.00. Buyer and Fischer advised Iraj Khoshnood that Sellers were required to sell the Domain Names to Buyer for the \$95,000.00 as provided in the Agreement and if they failed to do so they would be in breach. Iraj Khoshnood said that Sellers would not sell Buyer the Domain Names for the \$95,000.00 agreed-upon price.

COUNT I

BREACH OF CONTRACT – SPECIFIC PERFORMANCE

21. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint, as if set forth herein at length.

22. Although Buyer has performed all its obligations under the Agreement, Sellers refuse to honor the Agreement and refuse to transfer the domain names DOWLOAD.COM and DOWNLOD.COM to Buyer.

23. Sellers have materially breached the Agreement with Buyer.

24. The domain names DOWLOAD.COM and DOWNLOD.COM are unique pieces of property. Buyer is entitled to specific performance.

25. As a direct result of Seller's material breaches of the Agreement, Buyer has suffered damages, in excess of \$75,000.

WHEREFORE, Plaintiff respectfully requests that this Court:

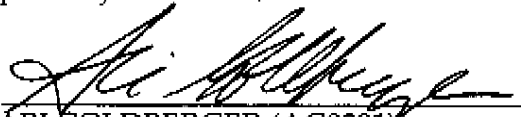
a. Enter an Order in its favor of Buyer and against the Sellers, ordering that the Sellers transfer the domain names DOWLOAD.COM and DOWNLOD.COM to Buyer, plus damages, interest, attorneys' fees and costs, in an amount to be determined, and;

b. Grant such other relief that the Court deems to be necessary and appropriate and that further investigation shall disclose.

Dated: February 9, 2005

Respectfully submitted,

By:


ARI GOLDBERGER (AG9391)

ARI GOLDBERGER, ESQWIRE.COM PC
35 CAMEO DRIVE
CHERRY HILL, NJ 08003
(856) 874-9651

EXHIBIT A

**tucows****SEARCH SITE****SEARCH >****DOMAIN LOOKUP****WHOIS >****OpenSRS Whois Utility**Whois info for, **download.com**:**Registrant:**

Joshuathan Investments, Inc.
22048 Sherman Way, Suite 204
Canoga Park, CA 91303
US

Domain name: **DOWLOAD.COM****Administrative Contact:**

Daniel, Daniel Kay dk@global2000.com
22048 Sherman Way, Suite 204
Canoga Park, CA 91303
US
+1.8185163999

Technical Contact:

Daniel, Daniel Kay dk@global2000.com
22048 Sherman Way, Suite 204
Canoga Park, CA 91303
US
+1.8185163999

Registration Service Provider:

DBMS VeriSign, dbms-support@verisign.com
800-579-2848 x4

Please contact DBMS VeriSign for domain updates, DNS/Nameserver changes, and general domain support questions.

Registrar of Record: **TUCOWS, INC.**Record last updated on **22-Nov-2004**.Record expires on **27-Dec-2005**.Record created on **28-Dec-1997**.

Domain servers in listed order:

NS1.EHOSTINGINC.COM	65.255.32.2
NS2.EHOSTINGINC.COM	65.255.32.3

Domain status: **REGISTRAR-LOCK****Existing Resellers****SIGN INTO RWI****RESOURCE CENTER****Become a Reseller**

Sign up now! >

FAQs Answered >

Refer me to a Reseller**Marketplace**
By Resellers
for Resellers.[Site Map](#) | [Korean](#) | [Contact us](#) | [Tucows.com](#) | [Press Releases](#) | [Marketplace](#) | [Feedback](#) | [Help](#)

EXHIBIT B

XML Powered
Whois Source

sponsored in part by



Whois Source	Mark Alert	Internet Statistics	Domain News	Whois Directory	Webmaster Information	XML API Partners	Registry Partners	Newsletter	About us
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[Reverse IP](#) - [Bulk Check](#) - [Preferences](#) - [Remote Search](#) - [Shopping Cart](#) - [Member Area](#) - [Logout](#)

DomainSponsor.com

Get paid to Park your domains,
Fastest Payout in the industry.
www.domainsponsor.com

Virtual Private Servers

Starting at \$14.95 for Root Access.
Spry Hosting is the leader in VPS.
www.spry.com

Award Winning Web Hosting

Free Setup and Free Design Software
30 Day Money-Back Guarantee!
www.valueweb.com

[Advertise on Whois Source](#)

DOWNLOAD.COM

SSL Cert: No valid SSL on this Host, [Get Secure](#)

Website Status: Active

Reverse IP: Web server hosts [3305 websites](#) (reverse ip tool requires free login)

Server Type: Apache/1.3.33 (Unix) PHP/4.3.9 ([Spry.com](#) also uses Apache)

IP Address: [65.255.32.5](#) ([ARIN](#) & [RIPE](#) IP search)

IP Location: - California - Los Angeles - E-hosting

Blacklist Status: Listed - [Cached Today](#) ([details](#))

Cached Whois: [Cached today](#)

Whois History: [15 records stored](#)

Record Type: Domain Name

Monitor: [Monitor](#) or [Backorder](#)

Wildcard search: 'download' or 'down' in all domains.

Other TLDs: [.com](#) [.net](#) [.org](#) [.info](#) [.biz](#) [.us](#)
 [3 available domains]

Name Server: NS1.EHOSTINGINC.COM

ICANN Registrar: [BULKREGISTER, LLC.](#)

Created: 1998-02-03

Expires: 2014-02-02

Status: [ACTIVE](#)

Amcore & Company For sale domains \$250 or best offer.
166 Sohrevardi Shomali Record Building Second Floor
Tehran, Iran Postal District
US

Domain Name: DOWNLOAD.COM

Administrative Contact::

Domain Reg. Services: amcore1td@global2000.com
Amcore Ltd.
166 Sohrevardi Shomali Record Building Second Floor
Tehran, Iran Postal District

Whois - download.com [2005-02-08]

US
 Phone:: 9821-876-5282
 Fax:: 9821-876-5505
 Technical Contact::
 Domain Reg. Services: amcore@tdpqlab.com
 Amcore Ltd.
 166 Sohrevardi Shomali Record Building Second Floor
 Tehran, Iran Postal District
 US
 Phone:: 9821-876-5282
 Fax:: 9821-876-5505
 Billing Contact::
 Domain Reg. Services: amcore@tdpqlab.com
 Amcore Ltd.
 166 Sohrevardi Shomali Record Building Second Floor
 Tehran, Iran Postal District
 US
 Phone:: 9821-876-5282
 Fax:: 9821-876-5505

Record updated date on: 2004-11-24 03:48:11

Record created date on: 1998-02-03

Record will be expiring on date: 2014-02-02

Domain servers in listed order:

NS1.EHOSTINGINC.COM	65.255.32.2
NS2.EHOSTINGINC.COM	65.255.32.3

TransferGuard LOCK Status => ENABLED

Automated Queries are strictly forbidden.

Anonymous queries for whois reports limited to 25 records.

Free membership is required for unlimited access as this helps control automated bots.



[Whois](#) | [About us](#) | [Reverse IP](#) | [Whois](#)
[History](#) | [Mark Alert](#) | [XML Name Spinner](#) |
[Holiday](#)
[Members](#) | [Silver Membership](#) | [Domain](#)
[News](#) | [Web Hosting](#) | [Whois Privacy](#) | [Site](#)
[Map](#)

Similar Sites: [eNom's](#)[Domain Name](#)

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Patents Pending.

EXHIBIT C

**DOMAIN NAME SALE AND TRANSFER AGREEMENT FOR
DOWLOAD.COM AND DOWNL0D.COM**

This Domain Name Sales, Transfer & Escrow Agreement ("Agreement") entered into between Joshuathan Investments, Inc., 22048 Sherman Way, Suite 204, Canoga Park, CA 91303, Daniel Khoshnood a/k/a Daniel Kay, 22048 Sherman Way, Suite 204, Canoga Park, CA 91303, Amcore & Company, 22048 Sherman Way, Suite 204, Canoga Park, CA 91303 (collectively "Seller"), and Ari Goldberger ESQwire.com PC, (Client Account) FMB 230, 100 Springdale Rd. A3, Cherry Hill, NJ 08003 ("Purchaser") on this 22nd day of January 2005, concerns all terms and conditions under which Seller agrees to sell and transfer all ownership rights in and to the Domain Names <DOWNL0D.COM> and <DOWLOAD.COM> (collectively, the "Domain Names").

Seller and the Purchaser hereby agree as follows:

1. **Purchase Price.** In consideration for payment of ninety five thousand dollars (\$95,000.00) ("Purchase Price") paid by Purchaser to Seller as set forth herein, Seller hereby assigns, sells, transfers and conveys to Purchaser all of Seller's right, title, and interest in and to the Domain Names.
2. **Seller's Representations and Warranties.**
 - a. Seller represents and warrants that Joshuathan Investments, Inc. is the lawful and exclusive registrant of the Domain Name DOWLOAD.COM and that Amcore & Company is the lawful and exclusive registrant of DOWNL0D.COM, and no other party has any right to registration or ownership of the Domain Names or has otherwise made any claim to the Domain Names at any time, including that the Domain Names violate another party's trademark rights, or violates any law or regulation.
 - b. Seller represents and warrants that the Domain Names are not subject to any mortgages, charges, pledges, security interests, liens, encumbrances, judgments, actions, claims, demands of any nature whatsoever.
 - c. Seller represents and warrants that no other person or entity has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, for the purchase, lease, or other acquisition from the Seller, of the Domain Names or any rights or interest therein.
 - d. Seller represents and warrants that it has the exclusive authority to enter into this transaction and transfer the Domain Names, free of the claims of any third parties. Seller agrees to indemnify, defend and hold harmless Purchaser in the event any of the Representations and Warranties are not true, or for claims related to any activity that occurred prior to the transfer of the Domain Names to Purchaser.
 - e. Seller represents and warrants that the Domain Names will receive traffic based on standard industry alexa rating of the domains

In the event that any of the representations and warranties are not as set forth herein, Seller shall be in breach of the agreement and Purchaser shall not be obligated to proceed.

3. **Escrow.com.** The sale of the Domain Names shall be facilitated by Escrow.com. Seller and Purchaser shall enter into an Escrow.com transaction. Ari Goldberger, ESQwire.com PC shall submit payment of the Purchase Price to Escrow.com. (50% of the Purchase Price shall be

arbitrarily allocated to each domain name in the Escrow.com transaction. This allocation shall not be interpreted as an indication of the respective value of the two domain names.)

4. **Transfer of Domain Names.** Upon confirmation that the Purchase Price is deposited with Escrow.com, Purchaser shall initiate and Seller shall approve change of registrar requests for the Domain Names in order to facilitate the transfer of the Domain Names to Purchaser.
5. **Release of Purchase Price to Seller.** Upon transfer of the Domain Names to Purchaser, confirmed by a WHOIS report showing Purchaser as registrant, Escrow.com shall release funds pursuant to their standard terms and procedures. Purchaser shall not be required to approve the release of the funds if any representations or warranties are not as set forth herein, including the representation as to user traffic. In the event Purchaser does not approve the release of funds, the Domain Names shall be transferred back to Seller, and the Purchase Price shall be refunded to Purchaser.
6. **Further Assurances.** Seller shall take all necessary actions, including providing all necessary documentation to the Registrar, in order to transfer the Domain Names to Purchaser.
7. **Counterparts/Fax.** This Agreement may be signed in counterparts. Signed counterparts of this Agreement transmitted via Fax are equivalent to a signed original of this Agreement.
8. **Entire Agreement.** This agreement constitutes the entire agreement between the parties and may only be amended in a writing signed by both parties.
9. **Governing Law.** This Agreement is made under and shall be governed by and interpreted in accordance with the laws of the State of New Jersey, without regard to that state's choice of law principles which may direct the application of the laws of another jurisdiction.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed by their duly authorized representatives.


ARI GOLDBERGER ESQ WIKI.COM PC

By: Ari Goldberger

Title President

Date: 1/30/05


DANIEL KHOSHNOOD,
A/K/A DANIEL KAY

Date: January 30 2005


JOSEPHATHAN INVESTMENTS, INC.

By: DANIEL KHOSHNOOD

Title: Director

Date: 01/30/2005

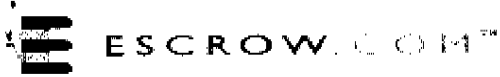
AMCORE & COMPANY

By: DANIEL KHOSNOOD

Title: Director

Date: 01/30/05

EXHIBIT D



[SIGN OUT](#) | [HELP](#)

[My Transactions](#)

[New Transaction](#)

[My Profile](#)

Status

Select any status for help.

3 SELLER SUBMITS DOMAIN NAME TRANSFER

Logged In as: Ari Goldberger (ari@ESQwire.com)

Transaction #316432 - download.com/downlod.com (You are the Buyer)

Seller notified to submit the domain name transfer

- This transaction is in **United States dollars**
- Escrow.com has verified your payment.
- The Seller was notified to transfer the domain name.
- **There is nothing further for you to do at this time.**

Frequently Asked Questions

[What if the Seller does not ship the items?](#)

[How should I ship merchandise?](#)

[Does Escrow.com assist in the domain name transfer?](#)

[My Transactions](#)

Merchandise

No.	Item Description	Quantity	Unit Price	Total Price
1	download/ downlod.com	1	\$95,000.00	\$95,000.00

[View WHOIS Information](#)

Sub-total \$95,000.00

Escrow.com Fee \$845.50

Total

Transaction ID: **316432**

Escrow ID: 266385

History

Feb 3 2005
12:26PM
PST
Escrow.com approves payment.

Feb 3 2005
12:25PM
PST
Payment received, seller will be prompted to ship after payment is secured.

Terms

Transaction #: 316432
Escrow #: 266385
Transaction Title: dowload.com/downlod.com
Seller: Daniel Khoshnood
(dk@global2000.com)
Buyer: Ari Goldberger (Ari@esqwire.com)
Inspection Period: 1 calendar days
Escrow Fee to be paid by: Buyer
The buyer is responsible for 100% of the escrow fee in the event the transaction is cancelled or the merchandise is returned.
Transaction fulfilled using: Domain Name Transfer

Feb 3 2005
9:12AM
PST
Buyer selected option to pay by wire transfer. Escrow.com waiting for payment to arrive.

[View Entire History](#)

